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(SHOW) PROCEEDINGS AND ORDERS DATE: 01296

CASE NBR 83-1-06865 CFH
SHORT TITLE Vincent, Harold DOCKETED: May 29 1984
VERSUS Louisiana

Date	Proceedings and Orders
May 29 1984	Petition for writ of certiorari and motion for leave to proceed in forma pauperis filed.
Jul 12 1984	DISTRIBUTED. September 24, 1984
Sep 5 1984	Response requested.
Oct 6 1984	Brief of respondent Louisiana in opposition filed.
Oct 11 1984	REDISTRIBUTED. October 26, 1984
Oct 31 1984	Record filed.
Oct 31 1984	Certified original record, 2 volumes, received.
Nov 13 1984	REDISTRIBUTED. November 21, 1984
Nov 26 1984	REDISTRIBUTED. November 30, 1984
Dec 3 1984	REDISTRIBUTED. December 7, 1984
Dec 10 1984	REDISTRIBUTED. January 4, 1985
Jan 7 1985	REDISTRIBUTED. January 11, 1985
Jan 14 1985	Petition DENIED. Dissenting opinion by Justice Brennan with whom Justice Marshall joins. (Detached opinion.)

CONTINUE (

PROCEEDINGS AND ORDERS DATE: 012

CASE NBR 83-1-06865 CFH
SHORT TITLE Vincent, Harold DOCKETED: May 29 198
VERSUS Louisiana

Date	Proceedings and Orders
Jan 14 1985	Petition DENIED. Dissenting opinion by Justice Brennan with whom Justice Marshall joins. (Detached opinion.) Justice Powell OUT.

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PETITION FOR WRIT OF CERTIORARI

ORIGINAL

83-6805

IN THE

SUPREME COURT OF THE UNITED STATES

NO.

HAROLD VINCENT

Petitioner

versus

STATE OF LOUISIANA

Respondent

MOTION TO PROCEED INFORMA PAUPERIS

Now into Court, through undersigned counsel, comes Harold Vincent, who respectfully suggests to the Court that:

1.

Harold Vincent desires to proceed herein informa pauperis due to his poverty and lack of means.

2.

Harold Vincent was appointed Counsel by the Fifth Circuit Court of Appeals persuant to the Criminal Justice Act of 1964 in connection with his direct appeal to the Fifth Circuit Court of Appeals.

Wherefore, Harold Vincent, respectfully prays that this Court grant him leave to proceed herein informa pauperis.

PATRICK L. DUBUSAU
P.O. BOX 859
JENA, LOUISIANA 71342
COUNSEL FOR HAROLD J. VINCENT

IN THE

SUPREME COURT OF THE UNITED STATES

.....

NO.

.....

HAROLD VINCENT

Petitioner

versus

STATE OF LOUISIANA

Respondent

.....

PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT OF THE UNITED STATES

.....

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(318) 992-6623
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28 U.S.C. § 2254 1

QUESTIONS PRESENTED

1. Does Townsend v. Swain 372 U.S. 293, 9 L. Ed 2d 770, 83 S. Ct. 745 and 28 U.S.C. § 2254 guarantee a person convicted under State Law, an Evidentiary Hearing in Federal District Court on a claim of incompetency at the time of trial, in the total absence of a State Evidentiary Hearing on the issue of incompetency at the time of trial.

2. Did the Fifth Circuit Court of Appeal err in requiring Petitioner to meet the standards set forth in Bruce v. Estelle, 483 F. 2d 1031 (1973) to establish a right to a Hearing on Petitioner's competency at the time of trial, in the absence of any evidentiary hearing on the trial competency issue in State Court.

IN THE

SUPREME COURT OF THE UNITED STATES

****

NO.

****

HAROLD VINCENT

Petitioner

versus

STATE OF LOUISIANA

Respondent

****

PETITION FOR WRIT OF CERTIORARI TO THE

SUPREME COURT OF THE UNITED STATES

****

Petitioner, Harold Vincent, respectfully prays that a Writ Of Certiorari issue to review the judgment of the United States Court of Appeal, Fifth Circuit, in this case.

CITIATION TO OPINIONS BELOW:

The opinion of the Fifth Circuit Court of Appeals is reported at (5th Cir., 1984), and is attached as Appendix A. The order of the Court denying rehearing is cited at (5th Cir., 1984), and appears in Appendix A.

JURISDICTION:

Jurisdiction of this court is invoked under 28 U.S.C. Sec. 1254 (1). The opinion of the Fifth Circuit Court of Appeals was rendered on January 25, 1984 and rehearing denied on March 30, 1984.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED:

This case involves 28 U.S.C. Sec. 2254 which provides in relevant part:

(d) In any proceeding instituted in a Federal court by an application for a Writ of Habeas Corpus by a person in custody pursuant to the judgment of a State court, a determinationafter a hearing on the merits of a factual issue, made by a State court of competent jurisdiction in a proceeding to which the applicant for the writ and the State or an officer or agent thereof were parties, evidenced by a written finding, written opinion, or other reliable and adequate written indicia, shall be presumed to be correct, unless the applicant shall establish or it shall otherwise appear, or the respondent shall admit--

(1) that the merits of the factual dispute were not resolved in the State court hearing;

(2) that the factfinding procedure employed by the State court was not adequate to afford a full and fair hearing;

(3) that the material facts were not adequately developed at the State court hearing;

(4) that the State court lacked jurisdiction of the subject matter or over the person of the applicant in the State court proceeding;

(5) that the applicant was an indigent and the State court, in deprivation of his constitutional right, failed to appoint counsel to represent him in the State court proceeding;

(6) that the applicant did not receive a full, fair, and adequate hearing in the State court proceeding; or

(7) that the applicant was otherwise denied due process of law in the State court proceeding;

(8) or unless that part of the record of the State court proceeding in which the determination of such factual issue was made, pertinent to a determination of the sufficiency of the evidence to support such factual determination, is produced as provided for hereinafter, and the Federal court on a consideration of such part of the record as a whole concludes that such factual determination is not fairly supported by the record:

STATEMENT OF THE CASE:

A. Course of Proceedings.

Petitioner was convicted of second degree murder on July 12, 1974. Harold J. Vincent (hereinafter Vincent) first raised the issue of his incompetency to stand trial by writ of habeas corpus filed in the Thirteenth Judicial District Court, Parish of Vernon, State of Louisiana. (Appendix B) This application was

denied ex proprio motu by the Honorable W. Peyton Cunningham. (Appendix C) Vincent then applied to the Louisiana Supreme Court for Writs of Habeas Corpus and Certiorari. (Appendix D) On March 30, 1981, the Louisiana Supreme Court denied Vincent's application for Writ of Habeas Corpus and Certiorari, with Chief Justice Dixon voting to grant the writ and order an evidentiary hearing on Vincent's claim that he was incompetent at trial. (Appendix E)

After failing to secure any evidentiary hearing in state court, Vincent filed a Petition for Writ of Habeas Corpus in the United States District Court for the Western District of Louisiana on June 1, 1982. (Appendix F) On September 3, 1983, the Honorable Nauman S. Scott denied Vincent's Writ of Habeas Corpus without an evidentiary hearing and ordered that the Writ be dismissed. (Appendix G)

Vincent appealed the ruling by Judge Scott to the United States Court of Appeal, Fifth Circuit, and undersigned counsel was appointed to represent Vincent on September 28, 1983. The Fifth Circuit Court of Appeals affirmed the decision of the District court on January 25, 1984 and denied rehearing on March 30, 1984.

Vincent seeks a writ of certiorari from this court to review and reverse the decision of the Fifth Circuit Court of Appeals herein and to remand this proceeding to Federal District Court for an Evidentiary hearing herein.

B. Facts Material to Questions Presented

Vincent raised the questions of his incompetency to stand trial due to a lack of thorazine in the Writ of Habeas Corpus filed in State District Court and in the Writ of Habeas Corpus and Certiorari filed with the Louisiana Supreme Court. (Appendix B, page _____, and Appendix D, page ____, respectively.) No evidentiary hearing of any kind was conducted by the State

District Court and none was ordered by the Louisiana Supreme Court. (Appendix C and Appendix E, respectively)

Vincent raised the issue of his incompetency to stand trial in the Writ of Habeas Corpus filed in the United States District Court for the Western District of Louisiana. (Appendix F, page _____.) The District Court denied the application for Writ of Habeas Corpus without an evidentiary hearing. (Appendix G) In denying the Writ of Habeas corpus, the Honorable Nauman S. Scott recognized that the record before the court did not answer the factual allegations raised by Vincent when he stated that:

> There is nothing in the trial transcript or the exhibits offered with the writ application to substantiate petitioner's allegation that he cut his leg or was without Thorazine... In short, there is nothing in the record, beyond the defendant's assertion, of any lack of medication or the adverse effects from the lack thereof. Record, page 64.
>
> The alleged lack of Thorazine, the alleged self mutiliation and the alleged trip to the hospital were occurrences that were never brought to the trial Judge's attention and are not reflected in the transcript record, either of the trial, or on Motions to Quash and Suppress argued on July 8, 1974. Record, page 65.

Despite the lack of any record which could resolve the factual allegations of Vincent, the District Court denied the Writ of Habeas Corpus.

C. The Federal Questions Raised and Decided Below

The issue of when an evidentiary hearing must be held on claims of trial incompetency, in the absence of state evidentiary findings, was clearly raised in petitioner's brief to the Fifth Circuit Court of Appeals. (Appendix H) In addition to specific pleading of the District Court's failure to comply with the dictates of Townsend v. Swain, 372 U.S. 293 and 28 U.S.C. § 2254, the mis-application of Bruce v. Estelle, 483 F. 2d 1043 to this proceeding was also addressed. (Appendix H) pp. _____ and _____ respectively)

1. THE COURT SHOULD GRANT CERTIORARI BECAUSE THE DECISION OF THE FIFTH CIRCUIT COURT OF APPEALS IS IN DIRECT CONFLICT WITH THIS COURT'S PRIOR DECISION IN TOWNSEND V. SWAIN, 372 U.S. 293 AND 28 U.S.C. SEC. 2254.

There is no dispute in this proceeding that Harold A. Vincent was never given any evidentiary hearing in State or Federal Court on his claims of incompetency at the time of trial. The requirements of Townsend v. Swain, 372 U.S. 293 and 28 U.S.C. Sec. 2254 that an evidentiary hearing must be held where:

1. Factual dispute not resolved in State hearing.
2. Fact-finding procedure used by state court did not afford a full and fair hearing.
3. the material facts were not adequately developed by the State Court.
4. Applicant was denied a full, fair and adequate hearing in the State Court proceeding.

have been met by the undisputed record hereinbelow.

It is difficult to imagine circumstances except a unilateral denial of an evidentiary hearing which violates as many of the dictates of Townsend v. Swain, supra. and 28 U.S.C. Sec. 2254 as did the District Court decision below and the affirmance of that decision by the Fifth Circuit Court of Appeals. A grant of certiorari is extremely important to present this type of wholesale erosion of the duty of Federal Courts to conduct evidentiary hearings in the situations mandated by Townsend v. Swain, supra. and 28 U.S.C. Sec. 2254.

2. THE COURT SHOULD GRANT CERTIORARI BECAUSE THE APPLICATION OF BRUCE V. ESTELLE, 483 F. 2d 1031 TO THE FACTS OF THIS CASE, CLEARLY VIOLATES THE RATIONALE OF MACHIBRODA V. UNITED STATES, 368 U.S. 487.

In the affirming the District Court's denial of the Writ of Habeas Corpus, the court below noted:

> Petitioner's proof in this case did not reach the level required by Bruce v. Estelle, 483 F. 2d 1043 (5th in 1973), to establish the right to a hearing on Petitioner's competency at the time of his trial.

The reliance on Bruce v. Estelle, supra., clearly places this decision below in direct conflict with this Court's decision in Machibroda v. United States, 368 U.S. 487.

In Machibroda v. United States, the Supreme Court in construing the federal analogy to 28 U.S.C. 2254, held that where specific and detailed factual allegations are made, which are not incredible and if true, would entitle petitioner to relief, then an Evidentiary hearing must be held. 368 U.S. 487, 7 L. Ed. 2d 473, 82 S. Ct. 510. Machibroda involved allegations made by John Machibroda concerning coercion of a guilty plea by a U.S. Attorney, who, with Machibroda were the only witnesses to the alleged coercion. Machibroda v. United States, 7 L. Ed. 2d. 473, at page 479. Despite the contentions of the Government that Machibroda's allegations were improbable and unbelievable, the Supreme Court held that such contentions could not deny him an opportunity to produce evidence to support his claim. Machibroda v. United States, id., at page 479.

The facts which were alleged by Vincent, if true, would clearly entitle Vincent to a new trial. Vincent did not make vague or conclusionary allegations in his application for Writ of Habeas Corpus. These following factual allegations were made by Vincent and supported by the Trial record herein:

1. Vincent was treated for mental illness from December 13, 1971 until his trial on July 6, 1974.
2. On February 26, 1973, Vincent was found to be incompetent to stand trial due to the mental illness.
3. Vincent's mental illness was controlled by the taking of thorazine.
4. The mental illness from which Vincent suffered, if not controlled, would render him unable to understand what was happening around him.
5. Vincent was suffering from this mental illness at the time of trial.
6. If Vincent stopped taking Thoracine, he would go back into episodes of psychosis.

7. Vincent suffered from nausea on the morning of July 8, 1976. Cf. Physician's Desk Reference, 35th Ed. at page 1692. Symptoms of Withdrawal from thorazine include nausea.

The facts alleged by Vincent that would be corroborated by outside sources include:

1. Thorazine not being sent with Vincent from Angola. Verification: Prison Records.
2. Vincent cut his leg to get to hospital to request thorazine. Verification: Leesville General Hospital records; Police Jury payment records; William E. Tilley, Chris Smith, III, Dolla Vincent, Brenda Carlin.
3. Vincent made requests of jail officials, his attorneys and family for thorazine. Verification: Vernon Parish police officers, William E. Tilley, Chris Smith, III., Dolla Vincent, Brenda Carlin.
4. The effect of thorazine deprivation upon Vincent's competency for trial. Verification: Expert testimony, including Dr. Butterworth's trial testimony.

The factual allegations raised by Vincent are specific and susceptible in most instances to independent verification.

The decision below would require petitioner to produce proof of his allegations without a forum for the production of such evidence. Machibroda clearly prohibits the placement of such a burden upon a petitioner for Writ of Habeas Corpus. A meaningful consideration of the claims raised by Petitioner will be forever foreclosed unless this court grants certiorari to correct this error by the Court of Appeals below.

CONCLUSION

Harold A. Vincent has been attempting to secure an evidentiary hearing on his trial competency since September 16, 1980. Despite specific factual allegations, most of which would be capable of independent verification, Vincent has been denied an evidentiary hearing in State Court and Federal District Court. Upon appealing the denial of an evidentiary hearing to the Fifth Circuit Court of Appeals, Vincent learned that despite the total absence of a forum for the production of facts, the "proof" he offered in support of his allegations was insufficient.

An evidentiary hearing may not be required on bare allegations of incompetency at trial, but that is not the case at hand. The allegations of Vincent went far beyond being mere conclusions or bald allegations and plead specific facts. No proof was offered in support of his allegations because he has yet to have a forum for the production of those facts.

This Court and later the United States Congress via Townsend v. Swain, 372 U.S. 293 and 28 U.S.C. Sec. 2254, respectively, attempted to establish standards to insure that unresolved factual disputes in Habeas Corpus proceedings would receive an evidentiary hearing in Federal District Court. In the face of no State evidentiary hearing of any nature, the decision of the Fifth Circuit affirming the trial courts denial of an evidentiary hearing to Vincent, clearly ignores and conflicts with the dictates of Townsend v. Swain, supra., and 28 U.S.C. 2254.

The proper standard for evidentiary hearing in Federal Habeas Corpus proceedings was previously set forth by this court in Machibroda v. United States, 368 U.S. 487. Machibroda does not, as the Fifth Circuit would require, mandate that the applicant offer "proof" of his allegations in absence of a forum for the production of that proof. Such a standard, as distinguished from that of the Fifth Circuit Court of Appeals herein, presents the Writ of Habeas Corpus to mere ritual or rite with denial a matter of rote. Fortner v. Balkcom, 380 F. 2d 816.

The Court should grant a writ of certiorari herein, reverse and remand this proceeding for petitioner to receive his first evidentiary hearing on his writ of habeas corpus.

RESPECTFULLY SUBMITTED:

PATRICK L. DUGGAN

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 82-4574

HAROLD J. VINCENT,

Petitioner-Appellant,

versus

ROSS MAGGIO,JR., Warden, Louisiana
State Penitentiary, ET AL.,

Respondent-Appellees.

Appeal from the United States District Court
for the Western District of Louisiana

(JANUARY 25, 1984)

Before CLARK, Chief Judge, BROWN and HIGGINBOTHAM, Circuit Judges.

PER CURIAM:

Petitioner's proof in this case did not reach the level required by Bruce v. Estelle, 483 F.2d 1043 (5th Cir. 1973), to establish the right to a hearing on petitioner's competency at the time of his trial. The judgment of the district court is

AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 82-4574

U.S. COURT OF APPEALS
FILED
MAR 30 1984
GILBERT F. GANUCHEAU
CLERK

HAROLD J. VINCENT,

Petitioner-Appellant,

versus

ROSS MAGGIO, JR., Warden, Louisiana
State Penitentiary, ET AL.

Respondents-Appellees.

Appeal from the United States District Court for the
Western District of Louisiana

ON PETITION FOR REHEARING

(March 30, 1984)

Before CLARK, Chief Judge, BROWN and HIGGINBOTHAM, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby DENIED.

ENTERED FOR THE COURT.

United States Circuit Judge

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IN THE UNITED STATES DISTRICT COURT FOR THE

WESTERN DISTRICT OF LOUISIANA

SHREVEPORT DIVISION

CIVIL ACTION NO. 82-0972

HAROLD J. VINCENT

VERSUS

FRANK BLACKBURN, Warden
Louisiana State Penitentiary

FOR PLAINTIFF:

Mr. Harold J. Vincent
#71139
Louisiana State Penitentiary
Angola, LA 70712

FOR DEFENDANT:

Asa K. Skinner
Assistant District Attorney
30th Judicial District
Attorney for the Attorney General
State of Louisiana

RICHARD T. HALEY

CHIEF UNITED STATES MAGISTRATE JUDGE

WESTERN DISTRICT OF LOUISIANA

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U. S. DISTRICT COU...
WESTERN DISTRICT OF LOUISIANA
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RULING:

Harold J. Vincent alleges he was illegally and unconstitutionally detained in the Louisiana State Penitentiary at Angola, Louisiana, after being convicted of murder on July 12, 1974. Plaintiff was sentenced to life imprisonment on November 8, 1974. His conviction and sentence were affirmed by the Louisiana Supreme Court, State v. Vincent, 330 So.2d 1976 (La. 1976). Petitioner claims he was incompetent to stand trial, because he was without his Thorazine for the six days prior to the beginning of the trial. This claim was not raised on direct appeal.

He raises numerous objections to the sanity proceedings, but a review of the record indicates that these were purely procedural in nature and involve only questions of state procedural law.

There is nothing in the trial transcript or the exhibits offered with the writ application to substantiate petitioner's allegation that he was off his medication or was without Thorazine. Dr. A. Jay Butterworth (see trial transcript pp. 260-302) was asked whether the defendant would revert to episodes of psychosis if he stopped taking the Thorazine. He replied that it was "almost a sure thing", (I.d. at 282) but this reference was to the time of the offense and not at the time of the trial. Dr. Butterworth was never questioned about the defendant's ability to participate at the trial. The record does not reflect that Dr. Butterworth was ever made aware of any alleged lack of medication. In short, there is nothing in the record, beyond the defendant's assertion, to any lack of medication or the adverse effects from the lack therefrom.

It is worthwhile to note that Mr. Vincent's counsel did not argue that his client was incompetent to stand trial on July 8, 1974. The Fifth Circuit discussed this in light of Pate v. Robinson, 383 US 375; 86 S.Ct. 836, 25 L.Ed.2d 815 (1966). The Court found that the failure to raise the competency issue is persuasive evidence that no Pate violation occurred." Reese v. Wainwright, 600 F.2d 1085, 1092 (C.A. 5 Fla. 1979). The Pate decision does not require the trial judge to be an omniscient psychiatrist. The defendant was found competent to stand trial (see petitioner's exhibit "D") and this professional evaluation was not challenged. The emphasis in Pate analysis is on the objective evidence presented to the trial court. The issue is whether, in light of what was then known, the failure to make further inquiries into peti-

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tioner's competence to stand trial denied him a fair trial. The trial court cannot be held at fault in failing to determine a question that it had no reason to believe was an issue. Davis v. Alabama, supra 345 F.2d 464; Reese, supra at 1093.

The lack of a Pate violation does not, however, affect petitioner's right to collaterally attack his conviction on the basis of incompetency at the time of his trial. To sustain such a claim, petitioner must bring forth facts that "positively, unequivocally, and clearly generate the real, substantial, and legitimate doubt" as to his mental capacity to assist in his trial defense. Reese, supra at 1093; Bruce v. Estelle, 483 F.2d 1031, 1043 (C.A. 5 Texas 1973); 536 F.2d 1051 (C.A. 5 Texas 1976).

There is little doubt that petitioner has, and may continue to suffer from severe mental problems. Dr. Butterworth certified him as meeting "the standards of triability" shortly before he was tried. This finding has never been attacked. There is nothing in the record that clearly shows that Mr. Vincent did not have sufficient present ability and understanding to consult with his attorney with a reasonable degree of rational understanding, or that he did not possess a rational and factual understanding of the proceeding against him as required by Dusky v. United States, 362 US 402, 402, 80 S.Ct. 788, 789; 4 LA Ed. 824 (1960).

The alleged lack of Thorazine, the alleged self mutilation, and the alleged trip to the hospital were occurances that were never brought to the trial Judge's attention and are not reflected in the transcript record, either of the trial, or on Motions to Quash and Suppress argued on July 8, 1974. In the latter transcript, Mr. Vincent was specifically asked if he had any medical problems in the last few minutes. The response was that he had thrown up. No mention of a cut leg or lack of Thorazine was mentioned. The Court minutes do not reflect any such incident. Furthermore, Mr. Vincent affirmatively stated that he was both physically and mentally competent to continue with the proceeding. (Transcript of hearing pg. 46). The court minutes do not reflect any such incident.

Petitioner has failed to come forward with any evidence that will raise a doubt, substantial or otherwise, that he was not legally competent to stand trial on July 8, 1974 or that he became incompetent during any relevant time thereafter.

IT IS, THEREFORE, ORDERED that plaintiff's application for writ of habeas corpus be denied and dismissed.

THUS DONE AND SIGNED, in Chambers, at Alexandria, Louisiana, on this 3d day of Sept, 1982.

HADRAN S. SCOTT
CHIEF UNITED STATES DISTRICT JUDGE
WESTERN DISTRICT OF LOUISIANA

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U. S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
FILED
SEP 3 1982
ROBERT H. SHEMWELL, CLERK
By _____ Deputy

IN THE UNITED STATES DISTRICT COURT FOR THE

WESTERN DISTRICT OF LOUISIANA

ALEXANDRIA DIVISION

HAROLD J. VINCENT

VERSUS CIVIL ACTION NO. 81-0973

FRANK BLACKBURN, Warden
Louisiana State Penitentiary

JUDGMENT

For reasons previously given, it is the judgment of this court that plaintiff's petition for writ of habeas corpus be denied and dismissed.

THUS DONE AND SIGNED, in Chambers, at Alexandria, Louisiana, on this 3rd day of Sept., 1982.

RAINEY S. SCOTT
CHIEF UNITED STATES DISTRICT JUDGE
WESTERN DISTRICT OF LOUISIANA

COPY SENT
DATE
BY
TO:

U. S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
FILED
JUN 02 1981
ROBERT H. SHEMWELL, CLERK
By _____ Deputy

IN THE UNITED STATES DISTRICT COURT FOR

THE WESTERN DISTRICT OF LOUISIANA

ALEXANDRIA DIVISION

HAROLD J. VINCENT

VS. CIVIL ACTION NO.

FRANK BLACKBURN, Warden C1810973

ORDER

Let this petition be filed in forma pauperis, and a copy be served on the District Attorney for the Thirtieth Judicial District of Louisiana, who is to file an appropriate response within 20 days of service.

The response should include the official record of the State Court, or a photocopy thereof, pursuant to 28 U.S.C.A. Section 2254, together with a memorandum of law fully stating respondent's legal position and his recommendation as to the need for this Court to conduct an evidentiary hearing on the merits of the petition in the light of the requirements of pertinent United States Supreme Court decisions and the requirements of 28 U.S.C.A. §2254.

THUS DONE AND SIGNED in Chambers at Lake Charles, Louisiana, on this the 1st day of June, 1981.

RAINEY S. SCOTT
CHIEF U. S. DISTRICT JUDGE

COPY SENT
DATE
BY
TO:

OPPOSITION BRIEF

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

Supreme Court, U.S.
FILED
OCT 6 1964
ALEXANDER L. STEVAS
Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

NO. 69-6001

HAROLD VINCENT
PETITIONER

VERSUS

STATE OF LOUISIANA
RESPONDENT

ANSWER TO PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE UNITED STATES

WILLIAM J. GUSTE, JR., ATTORNEY GENERAL
STATE OF LOUISIANA
WILLIAM E. TILLEY, DISTRICT ATTORNEY
36TH JUDICIAL DISTRICT OF LOUISIANA
ASA A. SKINNER, ASSISTANT DISTRICT ATTORNEY
36TH JUDICIAL DISTRICT OF LOUISIANA
P. O. BOX 1207
LEESVILLE, LOUISIANA 71446

TABLE OF AUTHORITIES

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IN THE

SUPREME COURT OF THE UNITED STATES

* * * * * * * * * * * *

NO. 83-6503

* * * * * * * * * * * *

HAROLD VINCENT
PETITIONER

VERSUS

STATE OF LOUISIANA,
RESPONDENT

ANSWER TO PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE UNITED STATES

STATEMENT OF THE CASE.

A. Course of Proceedings.

Petitioner was convicted of second degree murder on July 10, 1974. The petitioner, Harold J. Vincent, was represented by two able bodied defense counsel at the trial on July, 1974. Vincent appealed the conviction to the Louisiana State Supreme Court seen after the verdict of guilty was rendered. Petitioner, Vincent, filed an application for Writ of Habeas Corpus in 1977 raising thirteen (13) separate grounds for relief, all of which were denied. In 1978, he again filed a Writ of Habeas Corpus raising other grounds for relief. These writs also were denied by the Louisiana Supreme Court.

In December, 1980, petitioner, Vincent, filed an application with the Louisiana Supreme Court for Writ of Habeas Corpus, raising the grounds for relief filed herein. The Louisiana Supreme Court likewise denied that writ. It is important to note that the defendant did not raise the ground alleged in the present application for Writ of Habeas Corpus until seven six years after the trial on the merits. Defendant

had appealed the case and filed for two Habeas Corpus Writs, none of which raised the ground presently before this Honorable Court.

It is abundantly clear that the defendant was offered the greatest amount of protection to insure that he was competent to stand trial. There were two sanity hearings conducted herein on September 6, 1973 and on April 5, 1974. After the first hearing, the petitioner, Vincent, was sent back for further evaluation and treatment. It was only after months and months of examination and treatment that Dr. Butterworth determined that the petitioner was able to meet the standards of criability and help his lawyer and understand the nature of the charge against him. The district court's denial of the Writ of Habeas Corpus and the affirmation of said denial by the United States Fifth Circuit Court of Appeals is proper. The Fifth Circuit Court of Appeals relied on BRUCE V. ESTELLE, 483 F. 2d 1043, Certiorari denied, 97 Supreme Court 707, 429 U. S. 1065. BRUCE V. ESTELLE stands for the proposition that a petitioner is not automatically entitled to a hearing on his mental incompetency. There must be sufficient facts set forth in the petition from which the Court properly determines if there is a need for such a hearing. Respondent would submit that the sufficient facts test of BRUCE V. ESTELLE was simply not met in this case. There was nothing in the record of the entire proceedings, considering the facts brought to the attention of the trial court, which would have been sufficient to suggest a substantial doubt as to the petitioner's capacity to proceed. Considering the fact that the petitioner had two attorneys representing him during the trial of the matter and no competency hearing was requested by petitioner or his counsel during the trial, it would be impossible to ever conclude based upon the facts alleged by this petitioner that he was incompetent to stand trial at the time of the hearing in July, 1974.

In conclusion, respondent, the State of Louisiana, submits that this petitioner, Harold J. Vincent, was afforded all due process both before, during and after his trial and the ruling of the district court and Fifth Circuit Court of Appeals should not be disturbed.

Respectfully submitted,

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OPINION

SUPREME COURT OF THE UNITED STATES

HAROLD VINCENT v. LOUISIANA

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 80-6965. Decided January 14, 1981

The petition for writ of certiorari is denied.

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins, dissenting.

"There is no higher duty of a court, under our constitutional system, than the careful processing and adjudication of petitions for writs of habeas corpus, for it is in such proceedings that a person in custody charges that error, neglect, or evil purpose has resulted in his unlawful confinement and that he is being deprived of his freedom contrary to law." *Harris* v. *Nelson*, 394 U. S. 286, 292 (1969). Because the proceedings in this case have fallen intolerably short of fulfilling this duty, and because this Court must be vigilant in ensuring that lower courts do not improperly cut corners in administering the Great Writ, I respectfully dissent from the Court's denial of certiorari.

I

The petitioner Harold Vincent was convicted in 1974 of armed robbery and second-degree murder by a jury in Vernon Parish, Louisiana. Vincent's trial had been delayed for over two years while he underwent evaluation and treatment for schizophrenia. This mental illness was so severe that psychiatrists at the Louisiana State Penitentiary General Hospital had certified that Vincent did not meet the constitutional standard of triability in that he could neither "realize[ ] the nature of the charges against him" nor properly "assist his attorney." 1 Record 17, 18. After intensive treatment with psychotropic drugs, particularly Thorazine, these psychiatrists notified the trial court that, so long as Vincent remained on his regulated dosage, he would have the mental ca-

pacity to proceed with trial. *Id.*, at 18. They emphasized at Vincent's pre-trial sanity hearing that Vincent was dependent on Thorazine and that it was "almost a sure thing" that he would revert to episodes of psychosis if he stopped taking the medication. *Id.*, at 64; see also id., at 20–23.

According to Vincent's subsequent habeas petition, which Vincent prepared with the assistance of an inmate paralegal:

> "On July 6, 1974, petitioner was transferred from the Louisiana State Penitentiary to Vernon Parish without any of his medication. Petitioner immediately inquired with Vernon Parish officials about his medication, but no one seemed to know anything about it. Consequently, on the morning trial was scheduled to commence, petitioner intentionally cut his leg to get to the hospital to see someone about receiving some Thorazine. When he appeared in court with his pants leg rolled up and a rag wrapped around his lower leg, petitioner's mother and sisters became upset and rushed to talk with him. After petitioner told them the reason he cut his leg, they talked with petitioner's trial attorneys, William E. Tilley and Chris Smith, III, concerning the likelihood of petitioner receiving some Thorazine. Petitioner's attorneys brought the matter to the attention of the trial court, and after a few preliminary motions were argued, Judge Terrell ordered Vernon Parish officials to bring petitioner to the hospital.
>
> "Petitioner was taken to the Leesville General Hospital where his leg was bandaged and he was given a shot. Petitioner explained his condition to the doctor that treated him, but was informed that it was against hospital regulations to prescribe Thorazine to him. Petitioner was returned to the courthouse for continuation of the proceedings against him. Throughout his trial . . . petitioner was without his prescribed medication, Thorazine. He was convicted as charged and . . . sentenced to a term of life imprisonment." *Id.*, at 9–10.

Vincent claimed that, as a result of this alleged deprivation of Thorazine, he was "mentally incompetent" during the trial in that he was unable "to maintain his ability to consult with his attorney and understand the proceedings against him." *Id.*, at 10.

After Vincent filed his federal habeas petition, the District Court ordered the State to submit a response. Ten months passed before the State, prompted by the court's threat summarily to grant the petition, see id., at 36, finally filed an answer. The State denied Vincent's material allegations and, in the alternative, asserted that "[a]ssuming the facts to be as alleged by the defendant he knew exactly what he was doing in an attempt to get the medication that he desired" and thereby manifested his competence. *Id.*, at 44–45, 57.

Without holding an evidentiary hearing or otherwise inquiring into the merits of Vincent's allegations beyond reviewing the trial record, the District Court summarily dismissed the petition. *Id.*, at 64–66. The court reasoned that "[t]he alleged lack of Thorazine, the alleged self mutilation, and the alleged trip to the hospital were occurrences [*sic*] that were never brought to the trial Judge's attention and are not reflected in the transcript record"; that the medical testimony concerning Vincent's likely relapse in the absence of his medication pertained "to the time of the offense and not at the time of the trial"; and that Vincent's counsel had not raised the issue at trial or on direct review. *Ibid.* "In short, there is nothing in the record, beyond the defendant's assertion, of any lack of medication or the adverse effects from the lack thereof[rom]." *Id.*, at 64. The Court of Appeals for the Fifth Circuit affirmed in a brief unpublished order, reasoning that Vincent's "proof" did not "reach the level required" to secure habeas relief. *Id.*, at 86.

III

There can be no doubt that, if Vincent was in fact deprived of his Thirteenths during trial and this deprivation rendered him incompetent to stand trial, he is entitled to have his conviction vacated. "[T]he conviction of an accused person while he is legally incompetent violates due process." *Pate* v. *Louisiana*, 363 U. S. 375, 378 (1960), and a petitioner is not barred from raising this issue by his failure to have challenged his competence at trial, *id.*, at 384.[1] *See also Drope* v. *Missouri*, 420 U. S. 162 (1975); *Dusky* v. *United States*, 362 U. S. 402 (1960); *Bishop* v. *United States*, 350 U. S. 961 (1956). Yet the Court today refuses to disturb the lower courts' summary dismissal of Vincent's petition for failure of proof even though Vincent has never been accorded an opportunity to adduce evidence in support of his allegations. This result is squarely at odds with our precedents, with 28 U. S. C. § 2254, and with the Rules Governing Section 2254 Cases in the United States District Courts.

Where a habeas petition sets forth "specific and detailed factual assertions" that, if true, would entitle the petitioner to relief, the court must ensure the full development of the relevant facts. *Machibroda* v. *United States*, 368 U. S. 487, 494 (1962); *see also Harris* v. *Nelson*, 394 U. S., at 300. "Where the facts are in dispute, the federal court in habeas corpus must hold an evidentiary hearing if the habeas applicant did not receive a full and fair evidentiary hearing in a state court, either at the time of the trial or in a collateral proceeding." *Townsend* v. *Sain*, 372 U. S. 293, 312 (1963). *See also* 28 U. S. C. § 2254(d). This duty requires "careful consideration and plenary processing of [habeas] claims including full opportunity for presentation of the relevant facts." *Harris* v. *Nelson*, *supra*, at 298. Particular care is of course required where the habeas petitioner, as here, appears *pro se* or through the help of a fellow prisoner rather than with the assistance of an attorney.

Although a well-pled habeas petition frequently will require an evidentiary hearing, we have long recognized that federal courts may employ intermediate factfinding procedures in determining whether a full hearing is necessary. *See, e. g., Machibroda* v. *United States*, *supra*, at 496. Thus the Habeas Corpus Rules provide that the court may order limited discovery, 28 U. S. C. § 2254 Rule 6; "direct that the record be expanded by the parties by the inclusion of additional materials relevant to the determination of the merits of the petition," *id.*, Rule 7(a);[2] or arrange for informal conferences to inquire further into the merits of the petition, Advisory Committee's Note to Habeas Corpus Rule 8, 28 U. S. C., p. 356. *See also* 28 U. S. C. §§ 2246, 2247. Similarly, the court may direct the petitioner, on pain of dismissal, to specify the witnesses and evidence he relies upon. *See, e. g., Smith* v. *Balkcom*, 660 F. 2d 573, 575, n. 2, 585, n. 33 (CA5 1981), modified, 671 F. 2d 858, mandate recalled, 677 F. 2d 20, cert. denied, 459 U. S. 882 (1982). Although the particular procedures must necessarily vary with the circumstances of each case, the underlying concern is consistent: "where specific allegations before the court show reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is confined illegally and is therefore entitled to relief, it is the duty of the court to provide the necessary facilities and procedures for an adequate inquiry." *Harris* v. *Nelson*, *supra*, at 300.

Vincent's claims have never even been addressed through a state evidentiary hearing, and the duty of the District Court to give full and fair consideration to them was there-

[1] "[I]t is contradictory to argue that a defendant may be incompetent, and yet knowingly or intelligently 'waive' his right' to stand trial only while competent. *Ibid.*

[2] "The expanded record may include, without limitation, letters predating the filing of the petition in the district court, documents, exhibits, and answers under oath, if so directed, to written interrogatories propounded by the judge. Affidavits may be submitted and considered as a part of the record." *Id.*, Rule 7(b).

fore particularly clear. See, *e. g.*, *Townsend* v. *Sain*, *supra*, at 313–314. None of the justifications proffered by the court or the State can excuse the court's summary dismissal of Vincent's petition. The court asserted, for example, that there is nothing in the transcript record suggesting that Vincent had acted irrationally or had otherwise been incompetent during trial. 1 Record 65. However, we have consistently rejected the notion that the absence of such evidence in the transcript can *alone* obviate the need for an evidentiary hearing on the issue of the petitioner's mental capacity at trial. See, *e. g.*, *Drope* v. *Missouri*, 420 U. S., at 179; *Pate* v. *Robinson*, 383 U. S., at 386 ("While [petitioner's] demeanor at trial might be relevant to the ultimate decision as to his sanity, it cannot be relied upon to dispense with a hearing on that very issue"). Similarly, the court emphasized that Vincent's attorneys had failed to raise the issue of his possible incompetence at trial. 1 Record 64. Again, however, while this failure might well be evidence indicating that Vincent was not incompetent, it could just as well reflect his attorneys' unfamiliarity with the gravity of the situation or the ineffectiveness of their assistance; the ultimate truth cannot be determined in the absence of further inquiry.

The heart of the court's summary rejection of Vincent's petition appears to be that there is "nothing in the trial transcript" proving that Vincent was without his Thorazine during trial, mutilated himself in an attempt to obtain Thorazine, or would have reverted to his former incompetence if in fact he really were deprived of Thorazine. *Ibid.* Yet the alleged incidents occurred before the trial actually began, and the absence of supporting evidence in the transcript therefore obviously does not disprove Vincent's claim. Indeed, one of the fundamental purposes of federal habeas factfinding is to determine the truth of "purported occurrences outside the courtroom and upon which the record could, therefore, cast no real light." *Machibroda* v. *United States*, 368 U. S., at 494–495. See also *Houk* v. *Olson*, 326 U. S. 271, 274 (1945). In the proper exercise of its responsibilities under the Habeas Corpus Rules, the District Court easily could have sought independent verification of Vincent's allegations from prison and hospital records, and from inquiries directed to Vincent's former attorneys, prison officials, and Vincent's family.[1] Moreover, if the court had doubts about the effect of Thorazine deprivation on Vincent's capacity to stand trial, it should have directed Vincent's doctors to address the issue.[2] These procedures might well have demonstrated that Vincent's petition was without merit. If such discovery revealed substance in Vincent's allegations, however, then an evidentiary hearing would be essential to determine whether his conviction was unconstitutionally procured.

The District Court emphasized that, under pertinent Fifth Circuit precedent, a habeas petitioner alleging that he was incompetent to stand trial must demonstrate facts that "'positively, unequivocally, and clearly generate the real, substantial, and legitimate doubt'" as to his mental capacity to assist

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[1] As summarized in Vincent's Petition for Certiorari, "[t]he facts alleged by Vincent that would be corroborated by outside sources include:

"1. Thorazine not being sent with Vincent from Angola. Verification: Prison Records.

"2. Vincent cut his leg to get to hospital to request thorazine. Verification: Leesville General Hospital records; Police Jury payment records; William E. Tilley, Chris Smith, III, Della Vincent, Brenda Carlin.

"3. Vincent made requests of jail officials, his attorneys and family for thorazine. Verification: Vernon Parish police officers, William E. Tilley, Chris Smith, III., Della Vincent, Brenda Carlin. . . ." Pet. for Cert. 7.

[2] The District Court acknowledged that prison psychiatrists had testified at Vincent's sanity hearing that it was "almost a sure thing" that Vincent would revert to episodes of psychosis if deprived of Thorazine. 1 Record 64. Incredibly, the court dismissed the relevance of this testimony by observing that the psychiatrists' discussion related to Vincent's condition at the time of the offense "and not at the time of the trial." *Ibid.* We have long recognized the probity of prior medical opinion on issues of trial competence, see, *e. g.*, *Drope* v. *Missouri*, 420 U. S. 162, 180 (1975), and the psychiatrists' predictions in this case made further inquiries imperative.

in his defense. 1 Record 65, quoting *Bruce* v. *Estelle*, 483 F. 2d 1031, 1043 (CA5 1973). Although this standard may be perfectly appropriate, §2254 and its attendant Rules forbid the invocation of the standard *before* a petitioner has been given the opportunity to present his supporting evidence.[1] Where, as here, there is undisputed evidence that a habeas petitioner suffered from long-standing and severe mental illness, had previously been found unfit to stand trial as a result of his disorders, and would "almost [as] a sure thing" suffer a relapse if deprived of his medication, 1 Record 64, a court may not dismiss his claim that he was so deprived without inquiring into the merits or warning him that his petition would be dismissed if further substantiating evidence was not presented.[2] "The Government's contention that his allegations are improbable and unbelievable cannot serve to deny him an opportunity to support them by evidence. On this record it is his right to be heard." *Walker* v. *Johnston*, 312 U. S. 275, 287 (1941).

I dissent.

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[1] *Bruce* v. *Estelle*, relied on by the District Court below, itself illustrates this principle. After finding that Bruce had demonstrated "a history of mental illness" and "substantial evidence of mental incompetence at or near the time of trial," the Fifth Circuit concluded that an evidentiary hearing was required to resolve Bruce's claim of incompetence at trial. *Id.*, at 1043. "We would thus be remiss in our duty if we turned a deaf ear to petitioner's contentions since the record in this case evidences proceedings which did not adequately permit him to fairly present his serious allegations." *Ibid.*

[2] The District Court never notified Vincent that his petition was subject to dismissal for want of sufficient evidence. Yet the Habeas Corpus Rules require such fair warning. Rule 11 commands the federal courts to apply the Federal Rules of Civil Procedure "to the extent that they are not inconsistent with these rules." Federal Rule of Civil Procedure 12(c) in turn provides that, if the court considers entering judgment for reasons beyond the bare sufficiency of the pleadings, "all parties shall be given reasonable opportunity to present all material made pertinent to such a motion." See generally *Hopkins* v. *Kemp*, ——— U. S. ———, ——— - ——— (1964) (HARLAN, J., dissenting).

JUSTICE POWELL took no part in the consideration or decision of this petition.